

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 444

AN ACT to amend the Indiana Code concerning drugs and controlled substances.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-2-6-3 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2005]: Sec. 3. The institute is established to do the following:

- (1) Evaluate state and local programs associated with:
 - (A) the prevention, detection, and solution of criminal offenses;
 - (B) law enforcement; and
 - (C) the administration of criminal and juvenile justice.
- (2) Improve and coordinate all aspects of law enforcement, juvenile justice, and criminal justice in this state.
- (3) Stimulate criminal and juvenile justice research.
- (4) Develop new methods for the prevention and reduction of crime.
- (5) Prepare applications for funds under the Omnibus Act and the Juvenile Justice Act.
- (6) Administer victim and witness assistance funds.
- (7) Administer the traffic safety functions assigned to the institute under IC 9-27-2.
- (8) Compile and analyze information and disseminate the information to persons who make criminal justice decisions in this state.

SEA 444 — CC 1+



C
o
p
y

(9) Serve as the criminal justice statistical analysis center for this state.

(10) Establish and maintain, in cooperation with the office of the secretary of family and social services, a sex and violent offender directory.

(11) Administer the application and approval process for designating an area of a consolidated or second class city as a public safety improvement area under IC 36-8-19.5.

(12) Prescribe or approve forms as required under IC 5-2-12.

(13) Provide judges, law enforcement officers, prosecuting attorneys, parole officers, and probation officers with information and training concerning the requirements in IC 5-2-12 and the use of the sex and violent offender directory.

(14) Develop and maintain a meth watch program to inform retailers and the public about illicit methamphetamine production, distribution, and use in Indiana.

SECTION 2. IC 5-2-6-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 17. In consultation with the state police department and other law enforcement agencies, the institute shall operate and maintain a meth watch program to inform retailers and the public about illicit methamphetamine production, distribution, and use in Indiana.**

SECTION 3. IC 5-2-15 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 15. Methamphetamine Lab Reporting

Sec. 1. As used in this chapter, "law enforcement agency" has the meaning set forth in IC 10-11-8-2.

Sec. 2. As used in this chapter, "methamphetamine laboratory" means a location or facility that:

- (1) is being used;
- (2) was intended to be used; or
- (3) has been used;

to produce methamphetamine.

Sec. 3. A law enforcement agency that terminates the operation of a methamphetamine laboratory shall report the existence and location of the methamphetamine laboratory to:

- (1) the state police department;
- (2) the local fire department that serves the area in which the methamphetamine laboratory is located; and
- (3) the county health department or, if applicable, multiple

C
o
p
y



county health department of the county in which the methamphetamine laboratory is located;
on a form and in the manner prescribed by guidelines adopted by the superintendent of the state police department under IC 10-11-2-31.

Sec. 4. A law enforcement agency that discovers a child less than fourteen (14) years of age at a methamphetamine laboratory shall notify the division of family and children.

SECTION 4. IC 10-11-2-31 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 31.** (a) The superintendent shall adopt:

- (1) guidelines; and
- (2) a reporting form or a specified electronic format, or both; for the report of a methamphetamine laboratory by a law enforcement agency under IC 5-2-15-3.

(b) The guidelines adopted under this section must require a law enforcement agency to report the existence of a methamphetamine laboratory to:

- (1) the department;
 - (2) the local fire department that serves the area in which the methamphetamine laboratory is located; and
 - (3) the county health department or, if applicable, multiple county health department of the county in which the methamphetamine laboratory is located;
- on the form or in the specified electronic format adopted by the superintendent.

(c) The guidelines adopted under this section:

- (1) may incorporate a recommendation of the methamphetamine abuse task force (IC 5-2-14) that the superintendent determines to be relevant;
- (2) may require the department to report the existence of the methamphetamine laboratory to one (1) or more additional agencies or organizations;
- (3) must require the department to maintain reports filed under IC 5-2-15-3 in a manner permitting an accurate assessment of:
 - (A) the number of methamphetamine laboratories located in Indiana in a specified period;
 - (B) the geographical dispersal of methamphetamine laboratories located in Indiana in a specified period; and
 - (C) any other information that the superintendent determines to be relevant; and

**C
O
P
Y**



(4) must require a law enforcement agency to report any other information that the superintendent determines to be relevant.

SECTION 5. IC 13-11-2-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 42. "Contaminant", for purposes of environmental management laws, means any solid, semi-solid, liquid, or gaseous matter, or any odor, radioactive material, pollutant (as defined by the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as in effect on January 1, 1989), hazardous waste (as defined in the federal Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), as in effect on January 1, 1989), any constituent of a hazardous waste, or any combination of the items described in this section, from whatever source, that:

- (1) is injurious to human health, plant or animal life, or property;
- (2) interferes unreasonably with the enjoyment of life or property;
- or
- (3) otherwise violates:
 - (A) environmental management laws; or
 - (B) rules adopted under environmental management laws.

The term includes chemicals used in the illegal manufacture of a controlled substance (as defined in IC 35-48-1-9) or an immediate precursor (as defined in IC 35-48-1-17) of a controlled substance, and waste produced from the illegal manufacture of a controlled substance or an immediate precursor of the controlled substance.

SECTION 6. IC 13-14-1-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. (a) **The department shall maintain a list of persons certified to inspect and clean property that is polluted by a contaminant. The list may specifically note persons with particular expertise or experience in the inspection or cleanup of property contaminated by chemicals used in the illegal manufacture of a controlled substance (as defined in IC 35-48-1-9) or by waste produced from the illegal manufacture of a controlled substance.**

(b) The department may specify by rule that a person who meets certain qualifications prescribed by the department is a person certified to inspect and clean property that is polluted by a contaminant.

(c) The department shall adopt rules under IC 4-22-2:

- (1) to implement this section; and**
- (2) concerning the inspection and remediation of contaminated property.**

**C
o
p
y**



SECTION 7. IC 34-30-2-152.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 152.2. IC 35-48-4-14.7 (Concerning a retailer who discloses information concerning the sale of a product containing ephedrine or pseudoephedrine).**

SECTION 8. IC 35-48-4-14.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14.5. (a) As used in this section, "chemical reagents or precursors" refers to one (1) or more of the following:

- (1) Ephedrine.
- (2) Pseudoephedrine.
- (3) Phenylpropanolamine.
- (4) The salts, isomers, and salts of isomers of a substance identified in subdivisions (1) through (3).
- (5) Anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1).
- (6) Organic solvents.
- (7) Hydrochloric acid.
- (8) Lithium metal.
- (9) Sodium metal.
- (10) Ether.
- (11) Sulfuric acid.
- (12) Red phosphorous.
- (13) Iodine.
- (14) Sodium hydroxide (lye).
- (15) Potassium dichromate.
- (16) Sodium dichromate.
- (17) Potassium permanganate.
- (18) Chromium trioxide.
- (19) Benzyl cyanide.**
- (20) Phenylacetic acid and its esters or salts.**
- (21) Piperidine and its salts.**
- (22) Methylamine and its salts.**
- (23) Isosafrole.**
- (24) Safrole.**
- (25) Piperonal.**
- (26) Hydriodic acid.**
- (27) Benzaldehyde.**
- (28) Nitroethane.**
- (29) Gamma-butyrolactone.**
- (30) White phosphorus.**
- (31) Hypophosphorous acid and its salts.**

C
o
p
y



- (32) Acetic anhydride.
- (33) Benzyl chloride.
- (34) Ammonium nitrate.
- (35) Ammonium sulfate.
- (36) Hydrogen peroxide.
- (37) Thionyl chloride.
- (38) Ethyl acetate.
- (39) Pseudoephedrine hydrochloride.

(b) A person who possesses more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, ~~the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or phenylpropanolamine or a combination of any of these substances exceeding ten (10) grams~~ **pure or adulterated**, commits a Class D felony. However, the offense is a Class C felony if the person possessed:

- (1) a firearm while possessing more **than** ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, ~~the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or phenylpropanolamine or a combination of any of these substances exceeding ten (10) grams, pure or adulterated;~~ or
- (2) more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, ~~the salts, isomers or salts of isomers of ephedrine, pseudoephedrine, or phenylpropanolamine, or a combination of any of these substances exceeding ten (10) grams~~ **pure or adulterated**, in, on, or within one thousand (1,000) feet of:
 - (A) school property;
 - (B) a public park;
 - (C) a family housing complex; or
 - (D) a youth program center.

(c) A person who possesses anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with the intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6, commits a Class D felony. However, the offense is a Class C felony if the person possessed:

- (1) a firearm while possessing anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6; or
- (2) anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6 in, on, or within one thousand (1,000) feet of:

C
o
p
y



- (A) school property;
 - (B) a public park;
 - (C) a family housing complex; or
 - (D) a youth program center.
- (d) Subsection (b) does not apply to a:
- (1) licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier or an agent of any of these persons if the possession is in the regular course of lawful business activities; or
 - (2) person who possesses more than ten (10) grams of a substance described in subsection (b) if the substance is possessed under circumstances consistent with typical medicinal or household use, including:
 - (A) the location in which the substance is stored;
 - (B) the possession of the substance in a variety of:
 - (i) strengths;
 - (ii) brands; or
 - (iii) types; or
 - (C) the possession of the substance:
 - (i) with different expiration dates; or
 - (ii) in forms used for different purposes.
- (e) A person who possesses two (2) or more chemical reagents or precursors with the intent to manufacture:
- (1) Methcathinone, a schedule I controlled substance under IC 35-48-2-4;
 - (2) Methamphetamine, a schedule II controlled substance under IC 35-48-2-6;
 - (3) Amphetamine, a schedule II controlled substance under IC 35-48-2-6; or
 - (4) Phentermine, a schedule IV controlled substance under IC 35-48-2-10;
- commits a Class D felony.
- (f) An offense under subsection (e) is a Class C felony if the person possessed:
- (1) a firearm while possessing two (2) or more chemical reagents or precursors with intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6; or
 - (2) two (2) or more chemical reagents or precursors with intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6 in, on, or within one thousand (1,000) feet of:
 - (A) school property;

C
O
P
Y



- (B) a public park;
- (C) a family housing complex; or
- (D) a youth program center.

(g) A person who sells, transfers, distributes, or furnishes a chemical reagent or precursor to another person with knowledge or the intent that the recipient will use the chemical reagent or precursors to manufacture methamphetamine, methcathinone, amphetamine, or phentermine commits unlawful sale of a precursor, a Class D felony.

SECTION 9. IC 35-48-4-14.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 14.7. (a) This section does not apply to the following:**

(1) Ephedrine or pseudoephedrine dispensed pursuant to a prescription.

(2) The sale of a drug containing ephedrine or pseudoephedrine to a licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, or an agent of any of these persons if the sale occurs in the regular course of lawful business activities. However, a retail distributor, wholesaler, or manufacturer is required to report a suspicious order to the state police department in accordance with subsection (f).

(3) The sale of a drug containing ephedrine or pseudoephedrine by a person who does not sell exclusively to walk-in customers for the personal use of the walk-in customers. However, if the person described in this subdivision is a retail distributor, wholesaler, or manufacturer, the person is required to report a suspicious order to the state police department in accordance with subsection (f).

(b) The following definitions apply throughout this section:

(1) "Constant video monitoring" means the surveillance by an automated camera that:

- (A) records at least one (1) photograph or digital image every ten (10) seconds;**
- (B) retains a photograph or digital image for at least seventy-two (72) hours;**
- (C) has sufficient resolution and magnification to permit the identification of a person in the area under surveillance; and**
- (D) stores a recorded photograph or digital image at a location that is immediately accessible to a law**

**C
o
p
y**



enforcement officer.

(2) "Convenience package" means a package that contains a drug having as an active ingredient not more than one hundred twenty (120) milligrams of ephedrine or pseudoephedrine, or both.

(3) "Ephedrine" means pure or adulterated ephedrine.

(4) "Pseudoephedrine" means pure or adulterated pseudoephedrine.

(5) "Suspicious order" means a sale or transfer of a drug containing ephedrine or pseudoephedrine if the sale or transfer:

(A) is a sale or transfer that the retail distributor, wholesaler, or manufacturer is required to report to the United States Drug Enforcement Administration;

(B) appears suspicious to the retail distributor, wholesaler, or manufacturer in light of the recommendations contained in Appendix A of the report to the United States attorney general by the suspicious orders task force under the federal Comprehensive Methamphetamine Control Act of 1996; or

(C) is for cash or a money order in a total amount of at least two hundred dollars (\$200).

(6) "Unusual theft" means the theft or unexplained disappearance from a particular retail store of drugs containing ten (10) grams or more of ephedrine, pseudoephedrine, or both in a twenty-four (24) hour period.

(c) This subsection does not apply to a convenience package. A person may sell a drug that contains the active ingredient of ephedrine, pseudoephedrine, or both only if the person complies with the following conditions:

(1) The person does not sell the drug to a person less than eighteen (18) years of age.

(2) The person does not sell drugs containing more than three

(3) grams of ephedrine or pseudoephedrine, or both in one (1) transaction.

(3) The person requires:

(A) the purchaser to produce a state or federal identification card;

(B) the purchaser to complete a paper or an electronic log in a format approved by the state police department with the purchaser's name, address, and driver's license or other identification number; and

C
O
P
Y



(C) the clerk who is conducting the transaction to initial or electronically record the clerk's identification on the log. Records from the completion of a log must be retained for at least two (2) years, and may be inspected by a law enforcement officer in accordance with state and federal law. A retailer who in good faith releases information maintained under this subsection is immune from civil liability unless the release constitutes gross negligence or intentional, wanton, or willful misconduct. This subdivision expires June 30, 2008.

(4) The person stores the drug:

(A) behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to a customer without the assistance of an employee; or

(B) directly in front of the pharmacy counter in the direct line of sight of an employee at the pharmacy counter, in an area under constant video monitoring, if the drug is sold in a retail establishment that:

(i) is a pharmacy; or

(ii) contains a pharmacy that is open for business.

(d) A person may not purchase drugs containing more than three (3) grams of ephedrine, pseudoephedrine, or both in one (1) week.

(e) This subsection only applies to convenience packages. A person may not sell drugs containing more than one hundred twenty (120) milligrams of ephedrine or pseudoephedrine, or both in any one (1) transaction if the drugs are sold in convenience packages. A person who sells convenience packages must secure the convenience packages in at least one (1) of the following ways:

(1) The convenience package must be stored not more than thirty (30) feet away from a checkout station or counter and must be in the direct line of sight of an employee at the checkout station or counter.

(2) The convenience package must be protected by a reliable anti-theft device that uses package tags and detection alarms designed to prevent theft.

(3) The convenience package must be stored in restricted access shelving that permits a purchaser to remove not more than one (1) package every fifteen (15) seconds.

(4) The convenience package must be stored in an area that is under constant video monitoring, and a sign placed near the convenience package must warn that the area is under constant video monitoring.

C
O
P
Y



(f) A retail distributor, wholesaler, or manufacturer shall report a suspicious order to the state police department in writing.

(g) Not later than three (3) days after the discovery of an unusual theft at a particular retail store, the retailer shall report the unusual theft to the state police department in writing. If three (3) unusual thefts occur in a thirty (30) day period at a particular retail store, the retailer shall, for at least one hundred eighty (180) days after the date of the last unusual theft, locate all drugs containing ephedrine or pseudoephedrine at that particular retail store behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to customers without the assistance of an employee.

(h) A unit (as defined in IC 36-1-2-23) may not adopt an ordinance after February 1, 2005, that is more stringent than this section.

(i) A person who knowingly or intentionally violates this section commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

(j) Before June 30, 2007, the state police department shall submit a report to the legislative council detailing the effectiveness of this section in reducing the illicit production of methamphetamine. The report must describe the number of arrests or convictions that are attributable to the identification and logging requirements contained in this section, and must include recommendations for future action. The report must be in an electronic format under IC 5-14-6.

SECTION 10. [EFFECTIVE JULY 1, 2005] (a) The superintendent of the state police department shall adopt a form or a specified electronic format, or both, for the use of a retailer in recording a transaction involving a drug containing ephedrine or pseudoephedrine in accordance with IC 35-48-4-14.7, as added by this act.

(b) This SECTION expires June 30, 2008.

SECTION 11. [EFFECTIVE JULY 1, 2005] IC 35-48-4-14.5, as amended by this act, and IC 35-48-4-14.7, as added by this act, apply only to offenses committed after June 30, 2005.

C
O
P
Y



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

C
O
P
Y

